

Division of Public Health

State of Nebraska  
Dave Heineman, Governor

April 23, 2012

BRIGHT MORNING STAR CHILDCARE

Tanya Porter, Director  
1432 N Street, Suite #110  
Lincoln, NE 68508

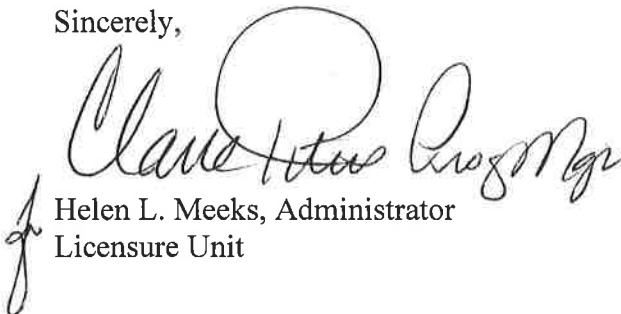
Re: Civil Penalty Payment – CCC License #9177

Dear Ms Porter:

Pursuant to the Notice of Disciplinary Action issued on April 2, 2012 by Joann Schaefer, MD, Chief Medical Officer and Director, Division of Public Health, Department of Health and Human Services, you are to pay by May 17, 2012, a Civil Penalty in the amount of \$1,365.00. Make checks payable to the *Licensure Unit*, and send payment to the attention of Marsha Wandersee at the herein provided address.

If you have any questions, please contact Child Care Licensing at (402) 471-9302.

Sincerely,



Helen L. Meeks, Administrator  
Licensure Unit

HLM/dcp

cc: Child Care Licensing

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA**

<b>IN THE MATTER OF:</b>	)	
<b>THE OPERATING CHILD CARE</b>	)	
<b>CENTER LICENSE OF TANYA PORTER, D/B/A</b>	)	<b>NOTICE OF</b>
<b>BRIGHT MORNING STAR CHILDCARE</b>	)	<b>DISCIPLINARY ACTION</b>

**LICENSED LOCATION: 1432 N STREET, STE. 110, LINCOLN, NE, 68508**

**NOTICE:**

Tanya Porter (hereinafter referred to as "Porter") is hereby notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") intends to impose disciplinary action against Porter's operating Child Care Center license for violation of the following:

**AUTHORITY:**

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;
- (2) Violation of an order of the Department under the act;"...

Nebraska Revised Statutes, section 71-1920, of the Child care Licensing Act provides that "...the Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act: ...(c) impose a civil penalty of up to five dollars per child, based upon the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;" ...

391 NAC 8-002 Staff Qualifications: "The licensee and the director shall not knowingly allow any person, neither paid nor volunteer, who has been convicted of, admitted to, or there is substantial evidence of crimes involving intentional bodily harm, crimes against children, crimes involving the illegal use of a controlled substance, or crimes involving moral turpitude to be on the center premises. Center staff, whether paid or volunteer, shall not engage in or have a history of behaviors injurious to or which may endanger the health or morals of the children in care." (Page 6, Standard 13, Child Care Center Standards)

391 NAC 8-005 Teacher/Assistant Teacher Qualifications: "The teacher/assistant teacher must have reached the legal age of majority." (Page 7, Standard 18, Child Care Center Standards)

391 NAC 8-006 Prior to Hire: "Candidates being considered for employment as a ... teacher, assistant teacher, ... shall submit a signed "Felony/Misdemeanor Statement" to the licensee or director. The licensee or director shall request additional information from the appropriate law enforcement agency as needed to comply with Department regulations." (Page 7, Standard 23, Child Care Center Standards)

391 NAC 8-007 Felony/Misdemeanor Statement: "The licensee is responsible for reporting any arrests, misdemeanor tickets other than traffic violations, pending criminal charges, and/or any felony/misdemeanor convictions on themselves, the director and staff which includes teachers/assistant teachers and all support staff. (Page 8, Standard 24, Child Care Center Standards)

"The licensee of a child care center shall submit a "Felony/Misdemeanor Statement", signed and dated by the licensee, director, and staff, which includes teachers, assistant teachers, and all support staff, age 19 and older, which includes the following information:

1. Felony and/or misdemeanor arrests related to crimes against children;
2. Misdemeanor tickets, other than minor traffic violations;
3. Felony and/or misdemeanor convictions;
4. Any pending criminal charge(s); and
5. Current parole or probation status.

This statement must include all law enforcement contacts, regardless of prosecution." (Page 8, Standard 25, Child Care Center Standards)

391 NAC 8-009 Staffing: "Each room where children are receiving care must include a teacher/assistant teacher." (Page 8, Standard 32, Child Care Center Standards)

## **FACTS AND FINDINGS**

Porter is the licensee and director of an operating Child Care Center. This program is licensed for a maximum of 91 children, six weeks to 12 years, 6:00 a.m. to 6:00 p.m., Monday through Friday. This program has been licensed since December 31, 2009. Previous to this, Porter was the licensee of a Family Child Care Home I and Family Child Care Home II program.

On October 24, 2011, Porter's license was placed on Probation by Order on Agreed Settlement for violation of regulations regarding staff qualifications, staffing and storage.

On January 6, 2012 at 8:34 a.m., Department staff conducted a monitoring inspection of Porter's program and found that eight staff present with 59 children; nine staff were required. Based on this information, Porter was assessed a civil penalty in the amount of \$455.00.

On February 27, 2012, Department staff conducted a complaint investigation to Porter's program regarding allegations there was no director or assistant director on the premises; staff under 19 years of age was left alone with children and the program had hired a teacher with a felony conviction.

Upon entering the program, Department staff observed a staff in a room alone supervising child care children. Department staff determined that this individual is only 18 years of age which is under the legal age of majority and fails to meet the qualifications of a teacher/assistant teacher. At the time of the investigation, the program exchanged, at the suggestion of Department staff, this individual with a staff from a classroom that had two qualified teacher/assistant teachers present. Morgan Winquest, who is identified as the Assistant Director, stated that she was unaware of this regulation.

Department staff also found that Brandi Allen, hired as a teacher, completed a Felony/Misdemeanor Statement on October 26, 2011. This Felony/Misdemeanor Statement was not accurately completed as the details, dates

and county of disposition was missing. Ms. Allen had indicated she had a Disturbing the Peace Charge and a Felony 4 for Theft. Information obtained from the Nebraska Data Exchange Network, the database used to conduct criminal checks shows that Ms. Allen has a number of criminal convictions from age 19, which include: Disturbing the Peace and Injuring or Destroying Property of Another in 2004; Driving under Suspension in April of 2007, and Disturbing the Peace in 2011. Ms. Allen was convicted of a Class 4 Felony Theft in 2007. Ms. Allen's probation was revoked on January 27, 2011 and served time in the Lancaster County Correctional facility from January 27, 2011 to May 3, 2011.

Ms. Allen failed to accurately report all of her criminal convictions and Porter failed to conduct a background check to determine if the statement was accurate. Porter failed to recognize that Ms. Allen's theft conviction was for a crime involving moral turpitude.

In addition, Department staff substantiated a violation of the Agreed Settlement occurred on February 20, 2012. The Agreed Settlement specifically states, in part, that the "licensee must designate a qualified individual to be a co-director to be on duty and in charge of the premises when the licensee is not present". During an interview with Ms. Winquest on February 27, 2012, Ms. Winquest stated that she was not at the program on February 20, 2012 from 7:50 a.m. to around 9:30 a.m. Porter had already notified the Department on February 19, 2012 that she would not be at the program on February 20, 2012.

#### **DISCIPLINARY ACTION IMPOSED:**

Based upon the facts set out above, the Department intends to impose the following:

1. The terms and conditions of the Probation imposed on October 24, 2011 by Order of Agreed Settlement remain in effect.
2. Porter is assessed a civil penalty in the amount of \$1,365.00; \$5.00 times license capacity of 91 children times three days of non-compliance:

October 26, 2011 – Porter violated the child care center regulations by hiring Ms. Allen when she had a conviction for a crime involving moral turpitude;

February 20, 2012 – Agreed Settlement was violated; and

February 27, 2012 – 18 year old was observed alone in a room caring for children.

Said penalty in the amount of \$1,365.00 must be paid on or by May 17, 2012, which is thirty (30) calendar days from the effective date of this Notice (April 17, 2012) and must be payable to the Nebraska Department of Health and Human Services, Division of Public Health, Licensure. Said penalty must be sent to Marsha Wandersee, Administrative Assistant, Nebraska Department of Health and Human Services, Division of Public Health, Licensure, Children's Services Licensing, P.O. Box 94986, Lincoln, Nebraska, 68509-4986.

3. Failure to comply with the terms of this disciplinary action and the Child Care Center Regulations will be grounds for revocation or such other discipline as the Department may deem appropriate after notice to the licensee and an opportunity for a hearing.

#### **BE ADVISED:**

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on April 17, 2012, which is fifteen days after the mailing of this Notice unless the Department, within such fifteen-day period, receives a written request for a hearing. The license shall continue in effect until the final order of the director if a hearing

is requested. If the director does not receive such request within such fifteen-day period, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than April 17, 2012, which is fifteen days after the mailing of this Notice. It should be addressed to:

Marsha Wandersee, for DHHS  
Children's Services Licensing  
Licensure – Division of Public Health  
P.O. Box 94986  
Lincoln, NE 68509-5986

**If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.**


Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that "any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of State of Nebraska in the district court of the county in which the program is located." ...

That Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee.

In addition, Title 391 of the Nebraska Administrative Code, section 3-001.08, provides that "amended applications will not be processed whenever a negative license action is pending."

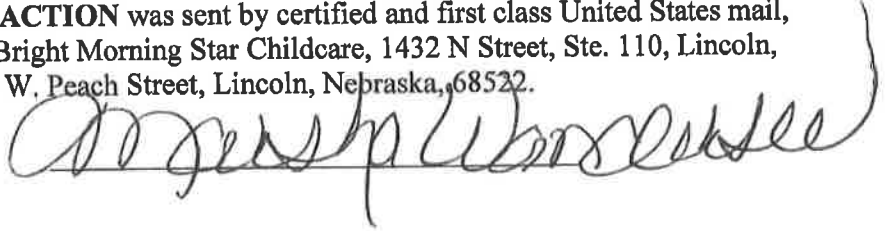
Dated: APRIL 2, 2012

Joann Schaefer, M.D.  
Chief Medical Officer  
Director, Division of Public Health  
Department of Health and Human Services

  
By: Patricia Urzedowski, Section Administrator  
Children's Services Licensing  
Nebraska Department of Health and Human Services  
Division of Public Health – Licensure Unit  
P.O. Box 94986  
Lincoln, NE 68509-4986

**CERTIFICATE OF SERVICE**

**COMES NOW**, the undersigned and certifies that on the 2<sup>nd</sup> day of April, 2012, a copy of the foregoing **NOTICE OF DISCIPLINARY ACTION** was sent by certified and first class United States mail, sufficient postage prepaid to Tanya Porter, Bright Morning Star Childcare, 1432 N Street, Ste. 110, Lincoln, Nebraska, 68508 and to Tanya Porter, 3020 W. Peach Street, Lincoln, Nebraska, 68522.

A handwritten signature in dark ink, appearing to read "D. J. Porter", is written over a horizontal line.

Department of Health & Human Services



Division of Public Health, Licensure Unit  
301 Centennial Mall South, 3<sup>rd</sup> Floor, P.O. Box 94986  
Lincoln, NE 68509-4986  
Phone (402) 471-2115 FAX (402) 471-3577

## Division of Public Health

State of Nebraska  
Dave Heineman, Governor

February 13, 2012

BRIGHT MORNING STAR CHILDCARE  
1432 N Street, Suite #110  
Lincoln, NE 68508

Re: Child Care Center Civil Penalty Payment – License #CCC9177

Dear Ms Tonya Porter, Director:

Pursuant to the Notice of Disciplinary Action issued on January 24, 2012 by Joann Schaefer, MD, Chief Medical Officer and Director, Division of Public Health, Department of Health and Human Services, you are to pay by March 12, 2012, a Civil Penalty in the amount of \$455.00. Make checks payable to the *Licensure Unit*, and send payment to the attention of Marsha Wandersee at the herein provided address.

If you have any questions, please contact Child Care Licensing at (402) 471-9302.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen L. Meeks". The signature is fluid and cursive, with the first name "Helen" and last name "Meeks" clearly distinguishable.

Helen L. Meeks, Administrator  
Licensure Unit

HLM/dcp

cc: Child Care Licensing

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA**

<b>IN THE MATTER OF: THE OPERATING CHILD CARE CENTER LICENSE OF TANYA PORTER, D/B/A BRIGHT MORNING STAR CHILDCARE</b>	) ) ) )	<b>NOTICE OF DISCIPLINARY ACTION</b>
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**— LICENSED LOCATION: 1432 N STREET, STE. 110, LINCOLN, NE, 68508**

**NOTICE:**

Tanya Porter (hereinafter referred to as "Porter") is hereby notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") intends to impose disciplinary action against Porter's operating Provisional Child Care Center license for violation of the following:

**AUTHORITY:**

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;" ...

391 NAC 8-002 Staff Qualifications: ... "Center staff, whether paid or volunteer, shall not engage in or have a history of behaviors injurious to or which may endanger the health or morals of the children in care." (Page 6, Standard 13, Child Care Center Standards)

391 NAC 8-009 Staffing: "Staff-child ratio must be met at all times. Compliance with staff-child ratio must be determined on a center-wide basis." (Page 8, Standard 30, Child Care Center Standards)

"The center shall count only those persons directly involved with immediate care of the children in the staff-child ratio." (Page 8, Standard 31, Child Care Center Standards)

"Each room where children are receiving care must include a teacher/assistant teacher." (Page 8, Standard 32, Child Care Center Standards)

"Center staff or any person designated by the licensee as having responsibility for children shall have the responsibility to provide adequate and appropriate supervision at all times children are in attendance." ... (Page 9, Standard 36, Child Care Center Standards)

**FACTS AND FINDINGS**

Porter is the licensee and director of an operating Child Care Center. This program is licensed for a maximum of 91 children, six weeks to 12 years, 6:00 a.m. to 6:00 p.m., Monday through Friday. This program has been



licensed since December 31, 2009. Previous to this, Porter was the licensee of a Family Child Care Home I and Family Child Care Home II program.

On October 24, 2011, Porter's license was placed on Probation by Order on Agreed Settlement for violation of regulations regarding staff qualifications, staffing and storage.

On January 6, 2012 at 8:34 a.m., Department staff conducted a monitoring inspection of Porter's program and found that eight staff were present with 59 children; nine staff were required. There were 12 infants (ages six weeks to 18 months); 18 toddlers (18 months to 3 years); 12 three year olds; 3 four and five year olds; and 14 children ages kindergarten and up.

#### **DISCIPLINARY ACTION IMPOSED:**

Based upon the facts set out above, the Department intends to impose the following:

1. The terms and conditions of the Probation imposed on October 24, 2011 by Order of Agreed Settlement remain in effect.
2. Porter is assessed a civil penalty in the amount of \$455.00 (\$5.00 times license capacity of 91 children times one day of non-compliance, January 6, 2012).

Said penalty in the amount of \$455.00 must be paid on or by March 12, 2012, which is thirty (30) calendar days from the effective date of this Notice (February 8, 2012) and must be payable to the Nebraska Department of Health and Human Services, Division of Public Health, Licensure. Said penalty must be sent to Marsha Wandersee, Administrative Assistant, Nebraska Department of Health and Human Services, Division of Public Health, Licensure, Children's Services Licensing, P.O. Box 94986, Lincoln, Nebraska, 68509-4986.

In the event that the civil penalty is not paid on or by the stated deadline indicated above, the Department may summarily suspend Porter's Child Care Center license known as Bright Morning Star Childcare. Such suspension will remain in effect until the civil penalty is paid in full.

3. Failure to comply with the terms of this disciplinary action and the Child Care Center Regulations will be grounds for revocation or such other discipline as the Department may deem appropriate after notice to the licensee and an opportunity for a hearing.

#### **BE ADVISED:**

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on February 8, 2012, which is fifteen days after the mailing of this Notice unless the Department, within such fifteen-day period, receives a written request for a hearing. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request within such fifteen-day period, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than February 8, 2012, which is fifteen days after the mailing of this Notice. It should be addressed to:

Marsha Wandersee, for DHHS  
Children's Services Licensing  
Licensure – Division of Public Health  
P.O. Box 94986  
Lincoln, NE 68509-5986

If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.


Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that "any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of State of Nebraska in the district court of the county in which the program is located." ...

That Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee.

In addition, Title 391 of the Nebraska Administrative Code, section 3-001.08, provides that "amended applications will not be processed whenever a negative license action is pending."

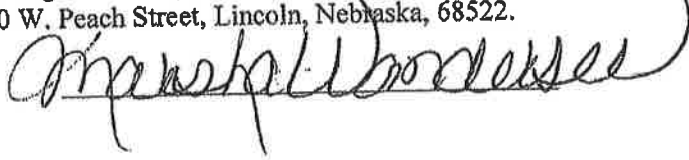
Dated: JANUARY 24, 2012

Joann Schaefer, M.D.  
Chief Medical Officer  
Director, Division of Public Health  
Department of Health and Human Services

  
By: Patricia Urzedowski, Section Administrator  
Children's Services Licensing  
Nebraska Department of Health and Human Services  
Division of Public Health – Licensure Unit  
P.O. Box 94986  
Lincoln, NE 68509-4986

**CERTIFICATE OF SERVICE**

COMES NOW, the undersigned and certifies that on the 24th day of January, 2012, a copy of the foregoing **NOTICE OF DISCIPLINARY ACTION** was sent by certified and first class United States mail, sufficient postage prepaid to Tanya Porter, Bright Morning Star Childcare, 1432 N Street, Ste. 110, Lincoln, Nebraska, 68508 and to Tanya Porter, 3020 W. Peach Street, Lincoln, Nebraska, 68522.



Department of Health & Human Services



Division of Public Health, Licensure Unit  
301 Centennial Mall South, 3<sup>rd</sup> Floor, P.O. Box 94986  
Lincoln, NE 68509-4986  
Phone (402) 471-2115 FAX (402) 471-3577

Division of Public Health

State of Nebraska  
Dave Heineman, Governor

November 4, 2011

BRIGHT MORNING STAR CHILDCARE  
1432 N Street, Ste. #110  
Lincoln, NE 68508

Dear Ms Tanya Porter, Center Director:

In accordance with the Order on Agreed Settlement (Order) issued on October 24, 2011 by Joann Schaefer, MD, Chief Medical Officer and Director, Division of Public Health, Department of Health and Human Services, your original License to operate a Child Care Center in the State of Nebraska has been placed on probation. A license imprinted with the term "PROBATION" is enclosed. This status became effective October 24, 2011, and it will remain in effect until April 24, 2013. Upon completion of the probation, a new license will be issued to you.

At this time we ask that you return your current license, within the next ten (10) days, to Marsha Wandersee in the Licensure Unit. If you have any questions, please contact Child Care Licensing at (402) 471-9302.

Sincerely,

A handwritten signature in dark ink, appearing to read "Helen L. Meeks".

Helen L. Meeks, Administrator  
Licensure Unit

HLM/dcp

cc: Child Care Licensing

This license shall be kept available in the establishment and such proof of credentialing shall be shown upon request.

# State of Nebraska

## PROBATION

Department of Health and Human Services  
Division of Public Health

**TANYA PORTER**

Is hereby authorized in compliance with laws of the State of Nebraska to establish and conduct an  
Operating Child Care Center

located at: 1432 N STREET, STE 110, Lincoln NE 68508

A maximum of 91 children in ages 6 WKS to 12 YRS may be in attendance at any one time during the  
hours of 0600 to 1800 on MTWTHF

**BRIGHT MORNING STAR CHILDCARE** is hereby issued License No. CCC9177 which is  
effective on 06/30/2011

Amended: 10/24/2011

Given under the name and Seal of the Department  
of Health and Human Services Regulation and  
Licensure of the State of Nebraska at Lincoln on  
November 8, 2011



*[Signature]*  
Joana Schaefer, MD, Chief Medical Officer, Director  
Division of Public Health, Department of Health and Human Services

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA

IN THE MATTER OF  
THE REQUEST FOR HEARING BY

TANYA PORTER  
d/b/a BRIGHT MORNING STAR  
CHILDCARE  
Child Care Center

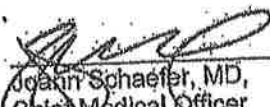
11-1827

ORDER ON AGREED  
SETTLEMENT

This matter came before the Director of the Division of Public Health on the Department's Motion for Approval of Agreed Settlement. The Director having considered said Motion and Agreed Settlement:

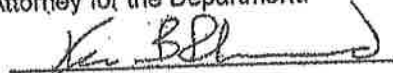
1. Approves the Agreed Settlement;
2. Finds the facts as set out in the Notice of Revocation are taken as true and adopted herein; and
3. Orders the parties to comply with all of the terms of the Agreed Settlement.

DATED this 24 day of October, 2011

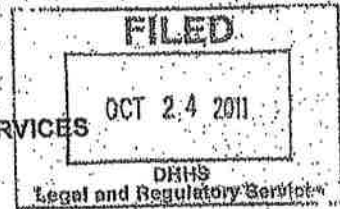
  
Joann Schaefer, MD,  
Chief Medical Officer  
Director, Division of Public Health  
Department of Health and Human Services

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2011 true and correct copies of the foregoing Order were served upon the parties by sending the same by regular United States mail, sufficient postage prepaid, to: Korey Reiman, Reiman Law Firm, P.C., L.L.O., 650 J Street, Suite 400, Lincoln, NE 68508 and by interoffice mail to Teresa M. Hampton, Attorney for the Department.



THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA



IN THE MATTER OF  
THE REQUEST FOR HEARING BY

TANYA PORTER  
d/b/a BRIGHT MORNING STAR  
CHILDCARE  
Child Care Center

11-1827

MOTION FOR APPROVAL  
OF AGREED SETTLEMENT

COMES NOW, the Department, by and through its undersigned counsel,  
and moves the Director of the Division of Public Health for an Order approving  
the Agreed Settlement reached by the parties in the above-entitled matter.

WHEREFORE, the Department respectfully requests that this Motion be  
granted.

Department of Health and Human  
Services

By Teresa M. Hampton  
Teresa M. Hampton, #16746  
Legal Services  
P. O. Box 95026  
Department of Health and Human  
Services  
Lincoln, Nebraska 68509-5026  
(402) 471-4051  
Attorney for Department

CERTIFICATE OF SERVICE

Comes Now, the undersigned and certifies that on the 21<sup>st</sup> day of  
October, 2011, a copy of the foregoing Motion for Approval of Agreed Settlement  
was sent by regular United States mail, sufficient postage prepaid to Corey  
Reiman, Reiman Law Firm, P.C., L.L.O., 650 J Street, Suite 400, Lincoln, NE  
68508.

Teresa M. Hampton  
Teresa M. Hampton



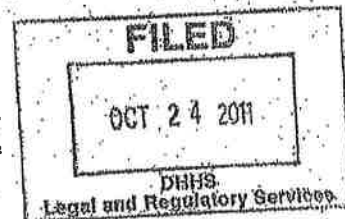
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA

IN THE MATTER OF  
THE REQUEST FOR HEARING  
BY

TANYA PORTER  
d/b/a BRIGHT MORNING STAR  
CHILDCARE  
Child Care Center

11-1827

AGREED SETTLEMENT



COMES NOW the Department of Health and Human Services, Division of Public Health (hereinafter "Department") and Tanya Porter (hereinafter "Licensee"), and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. Licensee holds a Provisional Child Care Center license at 1432 N Street, Ste. 110, Lincoln, NE 68508 issued by the Department, the executive agency of the state of Nebraska charged with administration of child care licensure statutes and regulations.
2. On June 17, 2011, the Department notified Licensee that it was proposing to revoke her Provisional Child Care Center license for the reasons set out in the Notice of Revocation. A copy of that is on file herein and incorporated into this agreement by this reference.
3. Licensee is entitled to a hearing upon request after the issuance of a Notice of Revocation. Licensee filed a timely written request for a hearing. A copy of the request is on file herein and incorporated into this Agreement by this reference. Licensee hereby waives her right to an administrative contested case hearing and any right to judicial review of any order that approves the terms of this Agreed Settlement.
4. Licensee has been represented by counsel, Kory Reiman, throughout these proceedings and has consulted counsel regarding her rights and the execution of this agreement.
5. Licensee agrees that she and her representatives have the authority to enter into



this Agreed Settlement.

6. Licensee admits the allegations contained in the Notice of Revocation.
7. This Agreed Settlement does not constitute a waiver, suspension, or modification of the requirements of the Child Care Licensing Act or the regulations adopted thereunder.
8. Licensee acknowledges that she understands that she and her employees and representatives remain bound by the rules and regulations of the Child Care Licensing Act, the rules and regulations of the Department and the Nebraska Revised Statutes and by entering into this Agreed Settlement agrees to comply with the same.
9. In resolution of the Department's concerns, the Licensee agrees to the provisions of this Agreed Settlement, and expressly agrees that violation of any of the terms of this Agreed Settlement or the statutes and regulations governing her license is ground for revocation of her license or as such other discipline as the Department may determine appropriate.
10. Compliance of this Agreed Settlement will be monitored by unannounced inspections by a Department representative (i.e. Child Care Inspection Specialist, Fire Marshal or designated agent, Resource Development Worker, Children and Family Services Specialist) or other designated agent of the Department.
11. No coercion, threats, or promises other than those stated herein were made to induce Licensee to enter into this Agreed Settlement.
12. Licensee's signature below represents her entry into this Agreed Settlement freely, voluntarily and knowingly.
13. Licensee agrees to the following:

Her child care license shall be on probation for eighteen (18) months after approval of this Agreed Settlement subject to the following terms and conditions:

  - A. Licensee must be on the licensed premises a minimum of eight (8) hours a day. Licensee must submit a copy of her work schedule to the Department within five (5) working days of the approval of this Agreed Settlement. If Licensee will not be at the premises during her scheduled hours Licensee must call the Department prior to the absence.

- B. License must enroll in, attend, and complete the Early Childhood Management Training Program.
- C. License must designate a qualified individual to be a co-director to be on duty and in charge of the premises when Licensee is not present. The designated individuals must enroll in, attend, and complete the Early Childhood Management Training Program.
- D. Licensee must retain, for at least five hours a week for the first six (6) months of the probationary period, at her own expense, an Early Childhood Consultant during the probationary period. The consultant must be currently approved by the Early Childhood Center to be an instructor in the child care management training program. The consultant must be used by Licensee to assist in the management and operation of Licensee's child care program. Licensee must provide the Department the name and contact information of the Early Childhood Consultant within fifteen (15) days of the beginning of the probation.
- E. Licensee and all staff currently employed or utilized by Licensee's child care program which includes director, assistant/co-director, teacher, assistant teacher, cooks, substitutes, volunteers, support staff or vehicle drivers) will at the program's expense, register/enroll, attend and successfully complete a minimum of:
  - a. Four hours of face-to-face training in the area of providing adequate and appropriate supervision at all times children are in care whether it be inside the center or outside on the playground; and
  - b. Two hours of face to face training on safe and healthy environments.

In order for the Department to determine if the training meets the requirements for which it is intended: names of child care program staff attending, training curriculum, date and time of training, name of the training presenter/instructor's name, and the number of hours must be submitted, in writing, to the Department and approved by the Department prior to the training. Such training must be completed within the first sixty days of the probation. This training will not count toward the required 12 hours of in-service training.

- H. Licensee must prominently post a copy of this Agreed Settlement with the current child care license so it is clearly visible to parents. Licensee must have all parents of children in care read this Agreed Settlement and sign an acknowledgment of such action. The Acknowledgment must be kept on site in the child's record and be immediately available for review upon the request of Department staff.
14. Licensee must send all documents required by this Agreed Settlement to: Katie Zabel, Child Care Inspection Specialist, Children's Services Licensing, Division of Public Health -- Licensure Unit, Gold's Bldg.-5<sup>th</sup> Floor, Ste. 540, 1033 N Street, Lincoln, NE 68508 or such other address required by the Department in writing.
16. If the Licensee discontinues her child care program for any reason, the time Licensee is not actively operating a licensed child care program will not count toward the term of probation and any subsequent child care license shall be subjected to the remainder of the term of probation. Any subsequent child care license indicating Licensee as Licensee/Director shall be subject to the terms of this Agreed Settlement including completion of the term of probation and all other requirements set forth herein.
17. Licensee must notify the Department, in writing, within seven days of any period she is not actively operating, and the probationary period will toll as of the date the Licensee stopped operating.
18. If the Director of the Division of Public Health does not approve this Agreed Settlement, in its entirety, it shall become null and void and will not be admissible for any purpose at any hearing that may be held on this matter or any further disciplinary action in the future.

(Space intentionally left blank, signature page follows.)

WHEREFORE, the parties request that an Order be entered approving and adopting the terms of this Agreement.

Dated this 19 day of October, 2011.

Tanya Porter, Licensee

Tanya Porter  
Tanya Porter

Dated this 21 day of October, 2011.

Nebraska Department of Health  
and Human Services

Teresa M. Hampton

Teresa Hampton #16746

Legal Services

P.O. Box 95026

Nebraska Department of Health  
and Human Services

Lincoln, Nebraska 68509-5026

(402) 471-4051

Attorney for the Department

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH  
STATE OF NEBRASKA

IN THE MATTER OF: )  
THE PROVISIONAL CHILD CARE ) NOTICE OF REVOCATION  
CENTER LICENSE OF TONYA PORTER, D/B/A ) AND DENIAL  
BRIGHT MORNING STAR CHILDCARE )

LICENSED LOCATION: 1432 N STREET, STE. 110, LINCOLN, NE, 68508

NOTICE:

Tanya Porter (hereinafter referred to as "Porter") is hereby notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") intends to revoke Porter's Provisional Child Care Center license and to deny the application to apply for an operating license dated June 10, 2011 for violation of the following:

AUTHORITY:

Nebraska Revised Statutes, section 71-1911.02 states in pertinent part: "An application shall be accompanied by...additional information as required by the Department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Act."

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act; ...

(2) Violation of an order of the Department under the act; ...

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;" ...

391 NAC 3-001.12 Denial of a License: "Denial of a license will be based upon any of the following circumstances: 1. The applicant's unwillingness or inability to comply with regulations; ..."

391 NAC 1-003.04 Definitions for Child Care Centers: ... "Director -- The person who is responsible for the daily operation of the child care center, including compliance with all regulations." (Page 4, Child Care Center Standards)

391 NAC 4-001.04 Suspension or Revocation: "The Department may initiate suspension or

revocation proceedings under any of the following circumstances: 1. When a licensee has shown a history of repeated violations of regulations; 2. When a licensee has violated a regulation(s) so as to create a situation which places children at substantial risk; ... 17. When a licensee has violated any regulation;..."

391 NAC 8-002 Staff Qualifications: ... "Center staff, whether paid or volunteer, shall not engage in or have a history of behaviors injurious to or which may endanger the health or morals of the children in care." (Page 6, Standard 13, Child Care Center Standards)

391 NAC 8-009 Staffing: "Center staff or any person designated by the licensee as having responsibility for children shall have the responsibility to provide adequate and appropriate supervision at all times children are in attendance." ... (Page 9, Standard 36, Child Care Center Standards)

391 NAC 391 NAC 8-020.06 Storage: "The licensee shall ensure that - ... 2. Separate locked storage is provided for insecticides, cleaning, polishing, and sanitizing agents, and any other poisons; these poisons must be kept separate from food items and inaccessible to children." ... (Page 16, Standards 40 and 41, Child Care Center Standards)

#### FACTS AND FINDINGS:

Porter is the licensee and director of a Provisional Child Care Center. This program is licensed for a maximum of 91 children, six weeks to 13 years, 6:00 a.m. to 6:00 p.m., Monday through Friday. This program has been licensed since December 31, 2009. Previous to this, Porter was the licensee of a Family Child Care Home I and a Family Child Care Home II program.

On March 24, 2011, Porter's license was placed on probation with terms and conditions until March 24, 2012. The probation required Porter to maintain compliance and ensure that her staff was familiar with the Child Care Center regulations as well as provide adequate and appropriate supervision to children. In addition, Porter was to ensure that staff not engage in behaviors which could endanger the health or morals of children; i.e., allowing a two-year-old child to leave the facility without staff being aware.

The Department is now revoking Porter's license based on violations of the above stated statutes and regulations. The violations were substantiated during complaint investigations conducted on May 18, 2011 and June 8, 2011.

Based on its investigation, the Department found the following:

- On Monday, May 9, 2011, at approximately 7:30 a.m., a two-year-old child was dropped off in the child's room by the foster mother. Emily, a staff person, was present in the room with one other child. The foster mother then proceeded to drop off two more children in other rooms. When the foster mother returned to the room to tell the two-year-old goodbye, the child was not in the room nor was the child outside the door waiting for the foster mother as Emily stated. The child was found outside crying by a passerby who stood between a car and the street to prevent the child from going any further. Sarah, the facility manager, stated the entire incident took two to three minutes from the time the child was missing until found.
- At no time did Emily leave the room to look for the child or alert any other staff that a child was missing.

- Porter was not at the facility at the time of the incident and assumed that Sarah, who was present, had handled the entire incident. Porter appeared to know very little about the incident that had occurred and was unable to share many details. Porter did not contact the foster mother to inform her as to how the situation had been resolved until May 18, 2011 when the foster mother happened to come to the facility. Porter stated Sarah was suspended for two days for "lack of competence in handling the matter".
- Porter informed Department staff that two doors leading to the outside were propped open the morning of May 9, 2011 which enabled the child to leave the program. Porter further informed Department staff that there is also a gate leading to the public sidewalk and which can easily be opened by a child and is frequently left open.
- Porter stated that the staff had just completed an infant supervision training before this incident occurred.
- Porter stated she is not in the office a lot but can be reached in the building by walkie talkie.
- Porter stated to Department staff that children who are four and five-years-old are allowed to use a public elevator by themselves to go from the downstairs to the upstairs.
- Porter stated to Department staff that a room was being used for schoolage children to eat lunch in the downstairs area. This room has not been approved by the Department for use by children.
- On June 8, 2011, Department staff observed that the door to the janitorial closet was not locked and the keys were in the doorknob and that cleaners were also unlocked in the kitchen. This was corrected at the investigation.

**In summary:**

- Bright Morning continues to violate the child care regulations; specifically those regulations related to adequate and appropriate supervision and staff behaviors.
- Bright Morning has violated the terms and conditions of their Probation.

Based on the above information, the Department is revoking Porter's Provisional Child Care Center License and denying her application for an operating child care license.

**BE ADVISED:**

That according to Nebraska Revised Statutes, section 71-1922, the action in this Notice shall become final on July 5, 2011, which is fifteen days after the mailing of this Notice unless the Department, within such fifteen-day period, receives a written request for a hearing. The license shall continue to be effective until the final order of the director if a hearing is requested. If the director does not receive such request within such fifteen-day period, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than July 5, 2011, which is fifteen days after the mailing of this Notice. It should be addressed to:

Marsha Wandersee, for DHHS  
Children's Services Licensing - Licensure  
Division of Public Health  
P.O. Box 94986  
Lincoln, NE 68509-4986




Nebraska Revised Statutes, section 71-1911, provides that a person who has had their "license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action." In addition, section 71-1920, (2), states that "a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years."

Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee."

Title 391 of the Nebraska Administrative Code, section 4-001.04, also provides that the "licensee shall not transfer the license to a household member or current staff member while a ...revocation action is still pending." In addition, Title 391 of the Nebraska Administrative Code, section 3-001.08, provides that "amended applications will not be processed whenever a negative license action is pending."

Dated: JUNE 17, 2011

Joann Schaefer, M.D.  
Chief Medical Officer  
Director, Division of Public Health  
Department of Health and Human Services

  
By: Patricia Urzedowski, Section Administrator  
Children's Services Licensing  
Licensure - Division of Public Health  
Nebraska Department of Health and Human Services  
P.O. Box 94986  
Lincoln, NE 68509-4986

**CERTIFICATE OF SERVICE**

COMES NOW, the undersigned and certifies that on the 17th day of June, 2011, a copy of the foregoing **NOTICE OF REVOCATION AND DENIAL** was sent by certified and first class United States mail, sufficient postage prepaid to Tonya Porter, Bright Morning Star Childcare, 1432 N Street, Ste. 110, Lincoln, Nebraska, 68508.

